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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

No. 651.

THE GREYHOUND CORPORATION,
Petitioner,

vs.

G. C. MARTIN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

To the Honorable Chief Justice and the Associates Justices of the Supreme Court of the United States:

Petitioner, The Greyhound Corporation, prays that a writ of certiorari issue to review an order and judgment

entered by the Court of Appeals for the Sixth Circuit on December 2, 1955, which said order and judgment reversed the action of the District Court for the Middle District of Tennessee in sustaining petitioner's motion for a summary judgment.

OPINIONS BELOW.

The opinion of the United States District Court for the Middle District of Tennessee is reported in 125 F. Supp. at page 362, and a copy of the same may be found as an appendix to this petition. The opinion of the United States Court of Appeals for the Sixth Circuit has not yet been reported, but may be found as an appendix to this petition.

JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on December 2, 1955, and the jurisdiction of this Court is invoked under the provisions of Title 28, Section 1254 (1) of the United States Code.*

QUESTION PRESENTED.

The question presented for review by this petition is:

1. Where a passenger, the dependent of an employee of the carrier, is injured in an interstate journey while riding on a trip pass containing a limitation of liability is such pass rendered other than a "free pass" as the term is used in the Hepburn Act [49 U. S. C. A., Section 1 (7)] so as to avoid the limitation of liability because the car-

* The jurisdiction of the District Court was based upon diversity of citizenship, 28 U. S. C. 1332 (a) (1).

rier has previously agreed in its Labor Union Contract to issue certain trip passes to the dependents of its employees?*

STATUTES INVOLVED.

The only statutes involved are certain portions of the Hepburn Act, these being expressly 49 U. S. C., Section 1 (7) and 49 U. S. C., Section 2.

The applicable portion of 49 U. S. C., Section 1 (7) is as follows:

> "(7) No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; . . ."

The applicable provision of 49 U. S. C., Section 2, is as follows:

> "If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of

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* The additional question, whether the effectiveness of the waiver of liability provision is limited to ordinary negligence or includes also gross negligence; and, if it includes gross negligence, whether the allegations of the complaint are sufficient to allege gross negligence, were questions ruled upon by the United States Court of Appeals for the Sixth Circuit and constitute questions which should be ruled upon by this Court as a part of this case, but such questions are not relied upon by petitioner as a basis for the granting of the writ.

this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful . . ."

STATEMENT OF THE CASE.

Respondent's intestate, Mrs. G. C. Martin, according to the allegations of the complaint, died as a result of an accident while she was a passenger on a bus belonging to the petitioner, The Greyhound Corporation (Appellant's Appendix Below, 8a). She was traveling on a pass which had been issued by the petitioner and which pass contained the stipulation:

"In Consideration of receiving this Free Pass, each of the persons named thereon, in using the same, voluntarily assumes all risks of accidents, and expressly agrees that the Company shall not be liable under any circumstances, whether of negligence of itself, its agents, or otherwise, for any injury to his or her person, or for any loss, or injury to his or her property; and that, as for him or her, in the use of this pass he or she will not consider the Company as a Common Carrier, or liable to him or her as such.

"And as a condition precedent to the issuing and use thereof, each said person represents that he or she is legally entitled to such free transportation under all laws governing the same, and agrees that he or she will not use this pass in violation of any law.

"It is understood that this pass is not to be used to the exclusion of revenue passengers but will be

honored between such points as available space will permit." (Appellee's Appendix Below, 1b.)

Respondent, but not respondent's wife, was employed by the petitioner, and under the labor contract it was provided as follows:

"Article XI—Passes."

"Employees with more than six (6) months but less than three (3) years of service shall be granted on written request trip passes for such trips over its lines as shall seem to the Company to be reasonable.

"Employees with three (3) years but less than seven (7) years of service on January 1, 1951, 1952 and 1953, will be supplied on the January 1st following their fulfillment of the service requirement, an annual pass good over the operating territory to which they are assigned. Employees with seven (7) years or more of service on January 1, 1951, 1952 and 1953, will be supplied on the January 1st following their fulfillment of the service requirement, an annual pass good over the system.

"Employees with more than one (1) year of service will be granted six (6) trip passes per year for a dependent wife or unmarried child under nineteen (19) years of age.

"Issuance of passes as provided herein shall be subject to any governmental regulations covering same. Passes shall be subject to load capacities at all times. Employees riding on passes shall not occupy seats to the exclusion of revenue passengers. Employee passes shall not be honored for commutation to and from work" (Appellant's Appendix Below 27a).

The accident, as a result of which Mrs. Martin died, occurred in the State of Alabama at a time when she was

traveling in interstate commerce (Appellant's Appendix Below 8a).

Petitioner filed a motion for summary judgment based upon the waiver of liability condition of the free pass issued to Mrs. Martin, which motion for summary judgment was sustained by the District Court (Appellant's Appendix Below 29a-33a); and respondent appealed to the United States District Court for the Sixth Circuit, where the judgment of the District Court was reversed and the case remanded to the District Court for the trial of the case upon its merits (Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit).

REASONS FOR GRANTING THE WRIT.

1. The Opinion of the United States Court of Appeals for the Sixth Circuit is in conflict with the Opinions of this Court in the cases of **Northern Pacific Railway Company v. Adams,** 192 U. S. 440; **Charleston & W. C. Railway Company v. Thompson,** 234 U. S. 576; **Kansas City Sou. Ry. Co. v. Van Zant,** 260 U. S. 495; and **Francis v. Southern Pacific Company,** 333 U. S. 445.

As above pointed out, the deceased, for whose death this action was instituted, was riding on a free pass issued by petitioner, The Greyhound Corporation, as a part of which free pass there was a waiver of liability executed by the deceased, such waiver of liability being a condition upon which the pass was issued. Contrary to the holding of the District Court, the United States Court of Appeals for the Sixth Circuit held that such waiver of liability was not valid because under the terms of the labor contract between the deceased's husband and the petitioner, the petitioner had agreed to issue such passes and, therefore, the United States Court of Appeals reasoned such pass ceased to be a gratuity.

Contrasted with such holding, this Court in the case of **Charleston & W. C. Railway Company v. Thompson**, 234 U. S. 576,* said:

> "The main question is whether, when the statute permits the issue of a 'free pass' to its employees and their families, it means what it says. The railroad was under no obligation to issue the pass. It may be doubted whether it could have entered into one, for then the services would be the consideration for the duty and the pass, and by Sec. 2 it was forbidden to charge 'a greater or less or different compensation' for transportation of passengers from that in its published rates. The antithesis in the statute is between the reasonable charges to be shown in its schedules and the free pass which it may issue only to those specified in the act. To most of those enumerated the and the free passes which it may issue only to those est sense, and when all that may receive them are grouped in a single exception, we think it plain that the statute contemplates the pass as gratuitous in the same sense to all. It follows, or rather is saying the same thing in other words, that even on the improbable speculation that the possibility of getting an oc-

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* This case was an appeal from the Georgia Court of Appeals and, as in the case at bar, involved the wife of an employee. The Georgia Court, like the United States Court of Appeals for the Sixth Circuit, erroneously reasoned that since the pass was a part of the consideration of employment it was not a gratuity, using the following language:

> "And, as between such an employee and the railroad company which employs him, the privilege and benefit of being afforded transportation without cost may be regarded as a part of the consideration paid for the services of the employee, and as an element of value within the contemplation of both parties at the time the contract of employment was entered into, and therefore such a free pass cannot be treated as necessarily a mere gratuity" (*Charleston & W. C. Railway Company v. Thompson*, 80 Southeastern 1097).

casional free pass entered into the motives of the employee in working for the road, the law did not contemplate his work as a conventional inducement for the pass, but, on the contrary, contemplated the pass as being what it called itself, free.

"As the pass was free under the statute, there is no question of the validity of its stipulations."

Later, and in the case of **Francis v. Southern Pacific Company,** 333 U. S. 445 (which case was not referred to by the United States Court of Appeals although relied upon there by petitioner), speaking on the same subject, and in direct conflict with the opinion of the United States Court of Appeals for the Sixth Circuit, this Court said:

"But in the setting of this case, we find the long and well-settled construction of the Act plus reenactment of the free-pass provision without change of the established interpretation most persuasive indications that the rule of the Adams, Thompson, and Van Zant cases has become part of the warp and woof of the legislation (cases cited). Any state law which conflicts with this federal rule governing interstate carriers must therefore give way by virtue of the Supremacy Clause. For it was held in the Van Zant case that the free-pass provision of the Hepburn Act was a regulation of interstate commerce 'to the completion of which the determination of the effect of the passes is necessary.' Thus there is no room for the application of Erie R. Co. v. Tompkins, 304 U. S. 64, 82 L. ed. 1188, 58 S. Ct. 817, 114 A. L. R. 1487, supra, on this phase of the case."

In all its decisions, this Court has recognized that when a pass is issued pursuant to the Hepburn Act, 49 U. S. C., Section 1 (7), which is the only authorization for the issuance of such passes, they are, as provided by the stat-

ute, "free". To issue the same on any other basis is expressly prohibited by the Hepburn Act, 49 U. S. C., Section 2, which fact was expressly recognized by this Court in the case of **Charleston & W. C. Railway Company v. Thompson**, 234 U. S. 576.* The applicability of the Hepburn Act, and especially Sections 1 (7) and 2 thereof [49 U. S. C., Section 1 (7) and Section 2] as heretofore interpreted by this Court, were expressly recognized by petitioner and the employer in the provision of the labor contract relating to passes wherein it is recited "Issuance of passes as provided herein shall be subject to any governmental regulations covering same".

The effect of the opinion of the United States Court of Appeals for the Sixth Circuit in this case is to overrule the **Adams, Thompson** and **Van Zant** cases, which, as recognized by this Court, have become a part of the warp and woof of the free pass provision of the Hepburn Act and thus leaves the entire transportation industry in doubt as to the legal effect of the issuance of free passes to employees and the members of their family where such free passes incorporate a waiver of liability provision.

Even if the District Court was in error in dismissing the complaint in its entirety, the case should have been remanded by the United States Court of Appeals for the Sixth Circuit for a trial limited to the question of whether petitioner was guilty of gross, or wilful and wanton, negligence. As to this question it is petitioner's insistence that even though the waiver of liability is inapplicable to gross, or wilful and wanton, negligence, the allegations of the complaint do not allege facts showing the same under the rule prescribed by the Alabama Courts in the cases of

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* And in the case of *Louisville & N. R. Co. v. Mottley*, 219 U. S. 467, this Court expressly held that a carrier could not "buy services, advertising, releases, or property with transportation."

Montgomery Street Ry. v. Rice, 38 So. 857, 142 Ala. 674; **Wunderlich v. Franklin**, 100 F. (2d) 164, and **Sibley v. Odum**, 58 So. (2d) 896.

CONCLUSION.

For the reasons stated the petition for the writ of certiorari should be granted and the decision of the Court of Appeals reversed.

Respectfully submitted,

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APPENDIX.

In the
DISTRICT COURT OF THE UNITED STATES
For the Middle District of Tennessee,
Nashville Division.

G. C. Martin,
Plaintiff,
vs.
The Greyhound Corporation,
Defendant.
} Civil. No. 1728.

"Judgment.

(Received for Entry Oct. 25, 1954.)

This is an action for damages filed by plaintiff, G. C. Martin, whose wife was injured while riding on a bus belonging to the defendant, Greyhound Corporation, from which injuries she subsequently died. The matter is before the Court upon a motion for summary judgment filed by said defendant.

The basis of defendant's motion is that plaintiff's wife was riding on defendant's bus pursuant to a pass issued to her which provided, in part, as follows:

> 'In consideration of receiving this Free Pass, each of the persons named thereon, in using same, voluntarily assumes all risks of accidents, and expressly agrees that the Company shall not be liable under any circumstances, whether of negligence of itself, its agents, or otherwise, for any injury to his or her person, or for any loss, or injury to his or her prop-

erty; and that, as for him or her, in the use of this pass he or she will not consider the Company as a Common Carrier, or liable to him or her as such.

'And as a condition precedent to the issuing and use thereof, each said person represents that he or she is legally entitled to such free transportation under all laws governing the same, and agree that he or she will not use this pass in violation of any law.'

Plaintiff contends that the pass was not a gratuity and that the limitation of liability is, therefore, not enforcible for the reason that said pass was specifically provided for and issued pursuant to a labor contract wherein the defendant agrees as part of its employment contract that its employees would be entitled to passes for themselves and certain members of their families, as provided for therein.

The contract between defendant and the union also contained the following provisions relative to the issuance of passes:

'Issuance of passes provided herein shall be subject to any governmental regulations covering same. Passes shall be subject to load capacities at all times. Employees riding on passes shall not occupy seats to the exclusion of revenue passengers. Employee passes shall not be honored for commutation to and from work.'

Plaintiff relies upon the case of Sassaman v. Pennsylvania R. Co., 144 F. 2d 950, which held that a pass issued to a train dispatcher partly in lieu of additional pay that would otherwise be required to cover dispatcher's transportation cost to and from work, was not a prohibited 'gratuity' within the Hepburn Act, and hence dispatcher occupied the status of a 'passenger for hire' and a release of employer's common law liability for negligence printed on the pass, similar to the one in the present case, was

void, notwithstanding the dispatcher could have used the pass for riding for pleasure.

In the instant case, plaintiff's wife was making a pleasure trip from Nashville, Tennessee, to Jacksonville, Florida. She was not employed in any way by the defendant company and was not on any business of the company. While it is true that the pass was issued pursuant to the labor contract, yet it was issued subject to any governmental regulations covering same, and the pass itself provided that it was not to be used to the exclusion of revenue passengers but would only be honored between such points as available space would permit. Plaintiff's wife clearly could not be said to have occupied the status of a 'passenger for hire' while using said pass under said circumstances, and the court is of the opinion that, even though issued pursuant to a labor contract, the pass was still a gratuity, and plaintiff was bound by the stipulation limiting liability of the carrier.

The Court is, therefore, of the opinion that the motion filed by defendant for a summary judgment should be granted.

Judgment will be entered accordingly.

This 25th day of October, 1954.

/s/ Elmer D. Davies,
United States District Judge."

In the
DISTRICT COURT OF THE UNITED STATES,
For the Middle District of Tennessee,
Nashville Division.

G. C. Martin
v.
The Greyhound Corporation.
Civil
No. 1728.

Final Summary Judgment.

This cause came on to be heard on the motion of the defendant, The Greyhound Corporation, for a summary judgment as authorized by Rule 56 of the Federal Rules of Civil Procedure; and it appearing to the Court from the entire record that the material facts are that the plaintiff's wife was riding on defendant's bus pursuant to a pass issued to her under which she agreed that the defendant, The Greyhound Corporation, would not be liable for any accident, and that said pass was a gratuity, and the limitation of liability was therefore enforceable so that the defendant, The Greyhound Corporation, is entitled to a judgment as a matter of law.

And it appearing to the Court that this judgment should be declared final pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure because there is no just reason for delay.

It Is Therefore Ordered, Adjudged and Decreed that a final summary judgment be entered in favor of the defendant, The Greyhound Corporation, and against the plaintiff, G. C. Martin, pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure because there is no just reason for delay, therefore finally dismissing the complaint of

the said G. C. Martin as to the defendant, The Greyhound Corporation, with costs.

Dated this November 10th, 1954.

Elmer D. Davies,
United States District Judge.

Approved as to form:

Kenneth Harwell,
Attorney for Plaintiff, G. C. Martin.

K. Harlan Dodson, Jr.,
Attorney for Defendant, The Greyhound Corp.

William J. Harbison,
Attorney for Defendant, The Goodyear Tire & Rubber Co., Inc.

PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Cause Argued and Submitted October 13, 1955—Before Simons, Allen and Miller, Circuit Judges.

This cause is argued by Kenneth Harwell for appellant and by Harlan Dodson for appellee and is submitted to the court.

Judgment.

(Filed December 2, 1955.)

Appeal from the District Court of the United States for the Middle District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded to the District Court for trial of the case upon the merits.

Opinion.

(Filed December 2, 1955.)

No. 12395.

UNITED STATES COURT OF APPEALS
For the Sixth Circuit.

G. C. Martin, Appellant, v. The Greyhound Corporation, Appellee.	Appeal from the United States District Court for the Middle District of Tennessee.

Decided December 2, 1955.

Before Simons, Chief Judge, Allen and Miller, Circuit Judges.

Simons, Chief Judge. Frustrated in his effort to submit his claim for damages to the court upon its merits, by a summary judgment in favor of the appellee, the appellant presents this appeal. The facts upon which he relies follow.

The appellant is, and since 1948 has been, an employee of the Southeastern Greyhound Lines, a division of the Greyhound Corporation. The appellee is a corporation,

incorporated under the laws of Delaware, and doing business in Tennessee as a common carrier of passengers. The appellant at the time here involved was a member of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America which had entered into an employment contract with the appellee by terms of which he was entitled to have issued to him and his family passes entitling them to passage on the bus system of the appellee. Pursuant to the terms of his employment contract, he requested, and was issued, passes entitling him and his wife to passage from Nashville, Tennessee, to Jacksonville, Florida, and return. On the morning of September 22, 1952, the appellant and his wife boarded one of the appellee's busses in Nashville, en route to Florida. He alleges that upon reaching a point within the state of Alabama, north of Birmingham, and while the bus was being driven at an unreasonable rate of speed and in a reckless and careless manner, with a defective front tire, the tire blew out and the bus rolled down an embankment, causing Mrs. Martin to suffer injuries which, eventually, caused her death. He charges that the accident resulted from the reckless speed of the bus at a time when the appellee knew, or should have known, the right front tire was defective. He charges explicitly that the appellee's want of care raises "the presumption of conscious indifference to consequences and guilty of gross and wanton negligence." The presumption arises from the rate of speed and from the fact that the appellee had replaced the safety, puncture proof tires on the bus by tires which were likely to puncture and blow out, under certain atmospheric conditions.

The appellee denied all charges of negligence and, as affirmative defenses, pointed to the terms of the passes which recited that the person named therein voluntarily assumed all risk of accident, waived liability, and represented that he would not use the pass in violation of any

law. The appellee further answers that he had a contract with the Goodyear Tire & Rubber Company under the terms of which that company, as an independent contractor, agreed to furnish tires for its busses and to care for them. If any tire was defective, it was due to the negligence of Goodyear and not its own and that by selecting Goodyear to furnish and maintain its tires in serviceable condition it was exercising the highest degree of care for its passengers.

The district court adjudged that the appellant's wife did not occupy the status of a "passenger for hire," that her pass, though issued pursuant to a labor contract, was a gratuity and that appellant and his wife were bound by the stipulations limiting the liability of Greyhound. It, thereupon, entered a judgment dismissing the complaint. The general rule stemming from **Railroad Company v. Stevens**, 95 U. S. 655, is that a contract undertaking to exempt a common carrier of passengers from liability for negligence is void. The reasons underlying it are fully set forth by Mr. Justice Hughes in **Santa Fe T. & T. R. Co. v. Grant Brothers Construction Co.**, 228 U. S. 177, at 184, 185. There, it was said that the rule rests on broad grounds of public policy, justifying restriction of liberty of contract because of the public needs to be achieved. The law governing common carriers was to secure the utmost care in the rendering of a service of the highest importance to the community. This concept is not, however, applicable in its full sweep to gratuitous passengers since it was held in **Northern Pacific Railroad Company v. Adams**, 192 U. S. 440, that a carrier could stipulate with a gratuitous passenger against liability for ordinary negligence. Although the decisions are not in complete agreement, it is, generally, held that a carrier cannot by such stipulations relieve itself from liability for acts done wantonly or wilfully, or for acts of gross negligence, **New York Central Railway v. Mohney**, 252 U. S. 152.

This brings us to the principal issue in the case and, so, to a consideration as to whether the appellant and his wife were "passengers for hire" or whether the passes constituted "gratuities." The appellee leans heavily upon **Charleston & Western Carolina R. Co. v. Thompson,** 234 U. S. 576. But there, Mr. Justice Holmes pointed out that the railroad was under no obligation to issue the pass. The appellee was under such an obligation. The union agreement with Greyhound provided that its members were entitled to receive trip passes for themselves and their families for such trips as seemed reasonable to the company. The fact that the passes were issued eliminates any question as to their reasonableness. The obligation of the appellee was fixed by its union contract. The passes were in a real sense part of the compensation paid to appellant as member of the union.

The appellee relies upon § 1, par. (7) and § 317 (b) of the Hepburn Act, Tit. 49, U. S. C. A. The first prohibits, with numerous exceptions, the free transportation of passengers by common carriers. Within such exceptions, as recipients of passes, are the carriers' employees and their families. The second provides that no common carrier by motor vehicle shall charge, demand, collect or receive a greater or less, or different, compensation for transportation than is provided in its published tariffs in effect at the time. **Charleston & Western Carolina Railway Co. v. Thompson,** supra, held that a pass issued to a member of the family of an employee of a railroad company is **free** under the provision of the Hepburn Act permitting it to be issued and, in consequence, a stipulation contained in it, exempting the company from liability in case of injury, is valid. The main question in that case was, therefore, said to be "whether when the statute permits the issue of a free pass to its employees and their families it means what it says." As the pass was free under the statute, there is no question of the validity of its stipulation. That

case must, however, be considered in the light of its specific facts, the court's rationalization in respect to them, and whether in actuality, as in name, the pass is **free.**

Norfolk Southern Railroad Company v. Chatman, 244 U. S. 276, demonstrates that the mere designation of a pass as **free** does not constitute it a gratuity and, so, in the case of livestock contracts, providing for the transportation of caretakers on free passes, such passes were held not to be **gratuities** issued without consideration. Similar was our own holding in **Tripp v. Michigan Central Railroad Company,** 238 Fed. 449. The Supreme Court in **Chatman** distinguished from the **Thompson** case because behind the pass there involved lay no such background of court decision and railroad practice, giving definite interpretation to the statute, in respect to caretaker passes. The teaching of **Chatman** is that the designation of a pass as **free** does not, of itself, make it a **gratuity.**

We have behind the passes issued in our case no such background of court decision and practice as was reviewed in **Chatman,** neither do we have here any "improbable speculation that the possibility of getting an occasional free pass entered into the motives of the employee" as rationalized in Thompson. Here is a specific written contract between the employer and employee, supported by a recognizable consideration, which dispels all possible speculation and denies the character of the pass as a **gratuity.** Moreover, the problem, as here presented, arises in an era of social, economic, and legal change which has mitigated harsh technical defenses to suits for recovery for negligent injury, have given new values to employee benefits, and new sanctions to their denial. Like all other so-called "fringe benefits," including hours and hospitalization, etc., the issue of passes is also subject to collective bargaining, and, like other benefits, is a thing of value, subject, no doubt, to the revenue laws when received.

There should be no difficulty in equating the value of the pass to the published tariff, in compliance with § 317 (b) of the Hepburn Act. Such climate should and has conditioned interpretation when interpretation is reasonably indicated to effectuate the Congressional purpose.

We are not here concerned with Alabama law. The free pass provisions of the Hepburn Act constitute a regulation of interstate commerce. The Greyhound was a common carrier in interstate commerce and the passes were granted for an interstate trip. The issue as to whether the appellant and his wife were "passengers for hire" is to be resolved by federal and not by state law. It is not of any importance that the appellant's wife was not an employee of Greyhound if the passes were not gratuitous.

We think the summary judgment should be set aside also on another ground. The allegations of the complaint are sufficiently specific to present an issue of willful, wanton, or gross negligence. If our view of the law is sound to the end that a carrier may not relieve himself from liability for such fault by stipulations, waiving liability, an issue of fact was presented which should be tried.

Reversed and remanded to the district court for trial of the case upon its merits.